

HOUSE No. 3885

The Commonwealth of Massachusetts

INITIATIVE PETITION OF RICHARD ELLIOT DOBLIN AND OTHERS.

OFFICE OF THE SECRETARY.
BOSTON, JANUARY 4, 2012.

Steven T. James
Clerk of the House of Representatives
State House
Boston, Massachusetts 02133

Sir: - I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the Constitution, an Initiative Petition for Law entitled "An Act for the Humanitarian Medical Use of Marijuana", signed by ten qualified voters and filed with this department on or before December 7, 2011, together with additional signatures of qualified voters in the number of 80,710, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

The Commonwealth of Massachusetts

In the Year Two Thousand and Twelve.

AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA.

Be it enacted by the People, and by their authority, as follows:

1 SECTION 1. Purpose and Intent.

2 The citizens of Massachusetts intend that there should be no punishment under
3 state law for qualifying patients, physicians and health care professionals,
4 personal caregivers for patients, or medical marijuana treatment center agents
5 for the medical use of marijuana, as defined herein.

6

7 Section 2. As used in this Law, the following words shall, unless the context
8 clearly requires otherwise, have the following meanings:

9 (A) "Card holder" shall mean a qualifying patient, a personal caregiver, or a
10 dispensary agent of a medical marijuana treatment center who has been issued
11 and possesses a valid registration card.

12 (B) "Cultivation registration" shall mean a registration issued to a medical
13 marijuana treatment center for growing marijuana for medical use under the
14 terms of this Act, or to a qualified patient or personal caregiver under the terms
15 of Section 11.

16 (C) "Debilitating medical condition" shall mean:

17 Cancer, glaucoma, positive status for human immunodeficiency virus, acquired
18 immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis
19 (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other
20 conditions as determined in writing by a qualifying patient's physician.

21 (D) "Department" shall mean the Department of Public Health of the
22 Commonwealth of Massachusetts.

23 (E) "Dispensary agent" shall mean an employee, staff volunteer, officer, or
24 board member of a non-profit medical marijuana treatment center, who shall be
25 at least twenty-one (21) years of age.

26 (F) "Enclosed, locked facility" shall mean a closet, room, greenhouse, or other
27 area equipped with locks or other security devices, accessible only to
28 dispensary agents, patients, or personal caregivers.

29 (G) "Marijuana," has the meaning given "marihuana" in Chapter 94C of the
30 General Laws.

31 (H) "Medical marijuana treatment center" shall mean a not-for-profit entity, as
32 defined by Massachusetts law only, registered under this law, that acquires,
33 cultivates, possesses, processes (including development of related products such
34 as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells,
35 distributes, dispenses, or administers marijuana, products containing marijuana,
36 related supplies, or educational materials to qualifying patients or their personal
37 caregivers.

38 (I) "Medical use of marijuana" shall mean the acquisition, cultivation,
39 possession, processing, (including development of related products such as
40 food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale,
41 distribution, dispensing, or administration of marijuana, for the benefit of
42 qualifying patients in the treatment of debilitating medical conditions, or the
43 symptoms thereof.

44 (J) "Personal caregiver" shall mean a person who is at least twenty-one (21)
45 years old who has agreed to assist with a qualifying patient's medical use of
46 marijuana. Personal caregivers are prohibited from consuming marijuana
47 obtained for the personal, medical use of the qualifying patient.

48 An employee of a hospice provider, nursing, or medical facility providing care
49 to a qualifying patient may also serve as a personal caregiver.

50 (K) "Qualifying patient" shall mean a person who has been diagnosed by a
51 licensed physician as having a debilitating medical condition.

52 (L) "Registration card" shall mean a personal identification card issued by the
53 Department to a qualifying patient, personal caregiver, or dispensary agent.
54 The registration card shall verify that a physician has provided a written
55 certification to the qualifying patient, that the patient has designated the
56 individual as a personal caregiver, or that a medical treatment center has met
57 the terms of Section 9 and Section 10 of this law. The registration card shall
58 identify for the Department and law enforcement those individuals who are

59 exempt from Massachusetts criminal and civil penalties for conduct pursuant to
60 the medical use of marijuana.

61 (M) "Sixty-day supply" means that amount of marijuana that a qualifying
62 patient would reasonably be expected to need over a period of sixty days for
63 their personal medical use.

64 (N) "Written certification" means a document signed by a licensed physician,
65 stating that in the physician's professional opinion, the potential benefits of the
66 medical use of marijuana would likely outweigh the health risks for the
67 qualifying patient. Such certification shall be made only in the course of a bona
68 fide physician-patient relationship and shall specify the qualifying patient's
69 debilitating medical condition(s).

70

71 Section 3. Protection from State Prosecution and Penalties for Health Care
72 Professionals

73 A physician, and other health care professionals under a physician's
74 supervision, shall not be penalized under Massachusetts law, in any manner, or
75 denied any right or privilege, for:

76 (a) Advising a qualifying patient about the risks and benefits of medical use
77 of marijuana; or

78 (b) Providing a qualifying patient with written certification, based upon a full
79 assessment of the qualifying patient's medical history and condition, that the
80 medical use of marijuana may benefit a particular qualifying patient.

81

82 Section 4. Protection From State Prosecution and Penalties for Qualifying
83 Patients and Personal Caregivers

84 Any person meeting the requirements under this law shall not be penalized
85 under Massachusetts law in any manner, or denied any right or privilege, for
86 such actions.

87 A qualifying patient or a personal caregiver shall not be subject to arrest or
88 prosecution, or civil penalty, for the medical use of marijuana provided he or
89 she:

90 (a) Possesses no more marijuana than is necessary for the patient's personal,
91 medical use, not exceeding the amount necessary for a sixty-day supply; and

92 (b) Presents his or her registration card to any law enforcement official who
93 questions the patient or caregiver regarding use of marijuana.

94

95 Section 5. Protection From State Prosecution and Penalties for Dispensary
96 Agents.

97 A dispensary agent shall not be subject to arrest, prosecution, or civil penalty,
98 under Massachusetts law, for actions taken under the authority of a medical
99 marijuana treatment center, provided he or she:

100 (a) Presents his or her registration card to any law enforcement official who

101 questions the agent concerning their marijuana related activities; and

102 (b) Is acting in accordance with all the requirements of this law.

103

104 Section 6. Protection Against Forfeiture and Arrest

105 (A) The lawful possession, cultivation, transfer, transport, distribution, or

106 manufacture of medical marijuana as authorized by this law shall not result in

107 the forfeiture or seizure of any property.

108 (B) No person shall be arrested or prosecuted for any criminal offense solely for

109 being in the presence of medical marijuana or its use as authorized by this law.

110

111 Section 7. Limitations of Law

112 (A) Nothing in this law allows the operation of a motor vehicle, boat, or

113 aircraft while under the influence of marijuana.

114 (B) Nothing in this law requires any health insurance provider, or any

115 government agency or authority, to reimburse any person for the expenses of

116 the medical use of marijuana.

117 (C) Nothing in this law requires any health care professional to authorize the

118 use of medical marijuana for a patient.

119 (D) Nothing in this law requires any accommodation of any on-site medical use

120 of marijuana in any place of employment, school bus or on school grounds, in

121 any youth center, in any correctional facility, or of smoking medical marijuana

122 in any public place.

123 (E) Nothing in this law supersedes Massachusetts law prohibiting the
124 possession, cultivation, transport, distribution, or sale of marijuana for
125 nonmedical purposes.

126 (F) Nothing in this law requires the violation of federal law or purports to give
127 immunity under federal law.

128 (G) Nothing in this law poses an obstacle to federal enforcement of federal
129 law.

130

131 Section 8. Department to define presumptive 60-day supply for qualifying
132 patients.

133 Within 120 days of the effective date of this law, the department shall issue
134 regulations defining the quantity of marijuana that could reasonably be
135 presumed to be a sixty-day supply for qualifying patients, based on the best
136 available evidence. This presumption as to quantity may be overcome with
137 evidence of a particular qualifying patient's appropriate medical use.

138

139 Section 9. Registration of nonprofit medical marijuana treatment centers.

140 (A) Medical marijuana treatment centers shall register with the department.

141 (B) Not later than ninety days after receiving an application for a nonprofit
142 medical marijuana treatment center, the department shall register the nonprofit
143 medical marijuana treatment center to acquire, process, possess, transfer,

144 transport, sell, distribute, dispense, and administer marijuana for medical use,
145 and shall also issue a cultivation registration if:

146 1. The prospective nonprofit medical marijuana treatment center has submitted:

147 (a) An application fee in an amount to be determined by the department
148 consistent with Section 13 of this law.

149 (b) An application, including:

150 (i) The legal name and physical address of the treatment center and the
151 physical address of one additional location, if any, where marijuana will be
152 cultivated.

153 (ii) The name, address and date of birth of each principal officer and board
154 member.

155 (c) Operating procedures consistent with department rules for oversight,
156 including cultivation and storage of marijuana only in enclosed, locked
157 facilities.

158 2. None of the principal officers or board members has served as a principal
159 officer or board member for a medical marijuana treatment center that has
160 had its registration certificate revoked.

161 (C) In the first year after the effective date, the Department shall issue
162 registrations for up to thirty-five non-profit medical marijuana treatment
163 centers, provided that at least one treatment center shall be located in each
164 county, and not more than five shall be located in any one county. In the event
165 the Department determines in a future year that the number of treatment centers

166 is insufficient to meet patient needs, the Department shall have the power to
167 increase or modify the number of registered treatment centers.

168 (D) A medical treatment center registered under this section, and its
169 dispensary agents registered under Section 10, shall not be penalized or
170 arrested under Massachusetts law for acquiring, possessing, cultivating,
171 processing, transferring, transporting, selling, distributing, and dispensing
172 marijuana, products containing marijuana, and related supplies and educational
173 materials, to qualifying patients or their personal caregivers.

174

175 Section 10. Registration of medical treatment center dispensary agents.

176 (A) A dispensary agent shall be registered with the Department before
177 volunteering or working at a medical marijuana treatment center.

178 (B) A treatment center must apply to the Department for a registration card for
179 each affiliated dispensary agent by submitting the name, address and date of
180 birth of the agent.

181 (C) A registered nonprofit medical marijuana treatment center shall notify the
182 department within one business day if a dispensary agent ceases to be
183 associated with the center, and the agent's registration card shall be immediately
184 revoked.

185 (D) No one shall be a dispensary agent who has been convicted of a felony
186 drug offense. The Department is authorized to conduct criminal record checks
187 with the Department of Criminal Justice Information to enforce this provision.

188

189 Section 11. Hardship Cultivation Registrations.

190 The Department shall issue a cultivation registration to a qualifying patient

191 whose access to a medical treatment center is limited by verified financial

192 hardship, a physical incapacity to access reasonable transportation, or the lack

193 of a treatment center within a reasonable distance of the patient's residence.

194 The Department may deny a registration based on the provision of false

195 information by the applicant. Such registration shall allow the patient or the

196 patient's personal caregiver to cultivate a limited number of plants, sufficient to

197 maintain a 60-day supply of marijuana, and shall require cultivation and storage

198 only in an enclosed, locked facility. The department shall issue regulations

199 consistent with this section within 120 days of the effective date of this law.

200 Until the department issues such final regulations, the written recommendation

201 of a qualifying patient's physician shall constitute a limited cultivation

202 registration.

203

204 Section 12. Medical marijuana registration cards for qualifying patients and

205 designated caregivers.

206 (A) A qualifying patient may apply to the department for a medical marijuana

207 registration card by submitting

208 1. Written certification from a physician.

209 2. An application, including:

210 (a) Name, address unless homeless, and date of birth.

211 (b) Name, address and date of birth of the qualifying patient's personal
212 caregiver, if any.

213

214 Section 13. Department implementation of Regulations and Fees.

215 Within 120 days of the effective date of this law, the department shall issue
216 regulations for the implementation of Sections 9 through 12 of this Law. The
217 department shall set application fees for non-profit medical marijuana treatment
218 centers so as to defray the administrative costs of the medical marijuana
219 program and thereby make this law revenue neutral.

220 Until the approval of final regulations, written certification by a physician shall
221 constitute a registration card for a qualifying patient. Until the approval of final
222 regulations, a certified mail return receipt showing compliance with Section 12
223 (A) (2) (b) above by a qualifying patient, and a photocopy of the application,
224 shall constitute a registration card for that patient's personal caregiver.

225

226 Section 14. Penalties for Fraudulent Acts.

227 (A) The department, after a hearing, may revoke any registration card issued
228 under this law for a willful violation of this law. The standard of proof for
229 revocation shall be a preponderance of the evidence. A revocation decision
230 shall be reviewable in the Superior Court.

231 (B) The fraudulent use of a medical marijuana registration card or cultivation
232 registration shall be a misdemeanor punishable by up to 6 months in the house
233 of correction, or a fine up to \$500, but if such fraudulent use is for the
234 distribution, sale, or trafficking of marijuana for non-medical use for profit it
235 shall be a felony punishable by up to 5 years in state prison or up to two and
236 one half years in the house of correction.

237

238 Section 15. Confidentiality

239 The department shall maintain a confidential list of the persons issued medical
240 marijuana registration cards. Individual names and other identifying
241 information on the list shall be exempt from the provisions of Massachusetts
242 Public Records Law, M.G.L. Chapter 66, section 10, and not subject to
243 disclosure, except to employees of the department in the course of their
244 official duties and to Massachusetts law enforcement officials when verifying
245 a card holder's registration.

246

247 Section 16. Effective Date.

248 This law shall be effective January 1, 2013.

249

250 Section 17. Severability.

251 The provisions of this law are severable and if any clause, sentence, paragraph
252 or section of this measure, or an application thereof, shall be adjudged by any

253 court of competent jurisdiction to be invalid, such judgment shall not affect,
254 impair, or invalidate the remainder thereof but shall be confined in its operation
255 to the clause, sentence, paragraph, section or application adjudged invalid.

FIRST TEN SIGNERS

<u>NAME</u>	<u>RESIDENCE</u>	<u>CITY OR TOWN</u>
Richard Elliot Doblin	3 Francis Street	Belmont
Regis A. Desilva	40 Larchwood Drive	Cambridge
Alexander T. Bok	35 Melrose Street	Boston
Barbara Theran	65 East India Row #6F	Boston
Erik Wunderlich	20 Seymour Street, #3	Boston
Rebecca A. Frank	20 Seymour Street, #3	Boston
Harold Theran	65 East India Row #6F	Boston
Marcella M. Duda	151 Bondsville Road	Ware
Susan S. Poverman	65 Larchwood Drive	Cambridge
Jesse R. Greenblatt	56 Elm Street	Somerville

Summary of No. 11-11

This proposed law would eliminate state criminal and civil penalties for the medical use of marijuana by qualifying patients. To qualify, a patient must have been diagnosed with a debilitating medical condition, such as cancer, glaucoma, HIV-positive status or AIDS, hepatitis C, Crohn's disease, Parkinson's disease, ALS, or multiple sclerosis. The patient would also have to obtain a written certification, from a physician with whom the patient has a bona fide physician-patient relationship, that the patient has a specific debilitating medical condition and would likely obtain a net benefit from medical use of marijuana.

The proposed law would allow patients to possess up to a 60-day supply of marijuana for their personal medical use. The state Department of Public Health (DPH) would decide what amount would be a 60-day supply. A patient could designate a personal caregiver, at least 21 years old, who could assist with the patient's medical use of marijuana but would be prohibited from consuming that marijuana. Patients and caregivers would have to register with DPH by submitting the physician's certification.

The proposed law would allow for non-profit medical marijuana treatment centers to grow, process and provide marijuana to patients or their caregivers. A treatment center would have to apply for a DPH registration by (1) paying a fee to offset DPH's administrative costs; (2) identifying its location and one additional location, if any, where marijuana would be grown; and (3) submitting operating procedures, consistent with rules to be issued by DPH, including cultivation and storage of marijuana only in enclosed, locked facilities.

A treatment center's personnel would have to register with DPH before working or volunteering at the center, be at least 21 years old, and have no felony drug convictions. In 2013, there could be no more than 35 treatment centers, with at least one but not more than five centers in each county. In later years, DPH could modify the number of centers.

The proposed law would require DPH to issue a cultivation registration to a qualifying patient whose access to a treatment center is limited by financial hardship, physical inability to access reasonable transportation, or distance. This would allow the patient or caregiver to grow only enough plants, in a closed, locked facility, for a 60-day supply of marijuana for the patient's own use.

DPH could revoke any registration for a willful violation of the proposed law. Fraudulent use of a DPH registration could be punished by up to six months in a house of correction or a fine of up to \$500, and fraudulent use of a registration for the sale, distribution, or trafficking of marijuana for non-medical use for profit could be punished by up to five years in state prison or by two and one-half years in a house of correction.

The proposed law would (1) not give immunity under federal law or obstruct federal enforcement of federal law; (2) not supersede Massachusetts laws prohibiting possession, cultivation, or sale of marijuana for nonmedical purposes; (3) not allow the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana; (4) not require any health insurer or government entity to reimburse for the costs of the medical use of marijuana; (5) not require any health care professional to authorize the medical use of marijuana; (6) not require any accommodation of the medical use of marijuana in any workplace, school bus or grounds, youth center, or correctional facility; and (7) not require any accommodation of smoking marijuana in any public place.

The proposed law would take effect January 1, 2013, and states that if any of its part were declared invalid, the other parts would stay in effect.

CERTIFICATE OF THE ATTORNEY GENERAL.

September 7, 2011.

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

RE: Initiative Petition No. 11-11: An Initiative Petition for a Law for the
Humanitarian Medical Use of Marijuana

Dear Secretary Galvin:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Cordially,

MARTHA COAKLEY,
Attorney General.